

U.S. Department of Homeland Security
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Washington, DC 20536-5009



U.S. Immigration
and Customs
Enforcement

July 16, 2018

Azadeh Shahshahani
Project South
9 Gammon avenue
Atlanta, GA 30315

RE: 2018-ICAP-00340; 2018-ICFO-33074

Dear Ms. Shahshahani:

This is in response to your letter dated June 7, 2018, received June 19, 2018, appealing the U.S. Immigration and Customs Enforcement (ICE) Freedom of Information Act (FOIA) Office's denial of your request for expedited processing request number **2018-ICFO-33074**. This appeal adjudication addresses only your request for expedited processing.

By email dated May 2, 2018, the ICE FOIA Office acknowledged receipt of your request and denied the request for expedited processing. You have appealed the denial of expedited treatment on your FOIA request. In your June 7, 2018 appeal letter, you indicated that there "exists a compelling need for expedited processing in this case because: (1) failure to expedite the Request could reasonably be expected to pose an imminent threat to the life or safety of individuals detained by ICE, and (2) Project South is an organization primarily engaged in disseminating information, and the records sought are urgently needed to inform the public about actual or alleged government activity. Failure to obtain the requested records on an expedited basis will allow ICE's current detention practices to remain unchecked, thereby posing an imminent threat to the life or safety of detained individuals." You also asserted that "Project South is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity," that the "records sought are urgently needed to inform the public about actual or alleged government activity," and that the "request concerns federal government activity because it seeks to discover ICE's standards of operation and the agency's treatment of detained persons."

On appeal, ICE conducts a *de novo* review of the denial of expedited treatment of your FOIA request. As a requester, you bear the burden under the FOIA of showing that your request satisfies the requirements for expedited treatment.

The DHS FOIA Regulations at 6 C.F.R. § 5.5(e)(1) sets forth the following four situations in which in processing on an expedited basis will be granted:

- (i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
- (ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information;

- (iii) The loss of substantial due process rights; or
- (iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

The first situation in which processing on an expedited basis is appropriate requires a showing of circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. You argue that the “failure to expedite the Request could reasonably be expected to pose an imminent threat to the life or safety of individuals detained by ICE.” You have not provided any evidence suggesting that standard processing of the request would pose an imminent threat to the life or physical safety of an individual.

The second situation in which processing on an expedited basis is appropriate has two requirements. The first requirement is that there is an “urgency to inform the public about an actual or alleged federal government activity.” The second requirement is that the requester “is primarily engaged in disseminating information.”

Although this FOIA request concerns federal government activity and the request has showed the requester’s capability to disseminate information, the reasons provided do not demonstrate that there is an urgency to inform the public about such federal government activity, which is “beyond the public’s right to know about government activity generally.” Inasmuch as there has not been a specific showing that the subject of this FOIA request is “a matter of current exigency to the American public” and “whether the consequences of delaying a response would compromise a significant recognized interest,” the reasons provided do not qualify as an “urgency.” *See Al-Fayed v. CIA*, 254 F.3d 300, 310 (D.C. Cir. 2001).

The third situation in which processing on an expedited basis is appropriate requires a showing of a loss of substantial due process rights. You have not provided any support of the allegations of loss of substantial due process.

The forth situation in which processing on an expedited basis is appropriate requires the requester to show that the requested matter is widespread and exceptional medial interest and that there exists possible questions about the government’s integrity which affect public confidence. You have not made an adequate showing of the existence of possible questions about the government’s integrity which would affect public confidence.

Therefore, ICE affirms the decision of ICE FOIA to deny your request for expedited processing.

This decision is the final action of ICE concerning your FOIA request. Inasmuch as you consider this to be a denial of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district in which you reside or have a principal place of business, or in which the agency records are situated, or in the District of Columbia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Should you have any questions regarding this appeal closure, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word “appeal,” your appeal number, which is **2018-ICAP-00340** and the FOIA case number, which is **2018-ICFO-33074**.

Sincerely,


for Erin Clifford
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security